

Media One Incorporated and its alter ego/single employer¹ Bauer-Kinnear Enterprises, Inc. and International Alliance of Theatrical Stage Employees Local No. 15, AFL-CIO. Case 19-CA-22425

February 28, 1994

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

Upon a charge filed by the Union on December 4, 1992, the General Counsel of the National Labor Relations Board issued a complaint on January 28, 1993, against Media One Incorporated d/b/a Bauer-Kinnear Enterprises, Inc., alleging that it violated Section 8(a)(5) and (1) of the National Labor Relations Act. On February 19, 1993, it filed an answer to the complaint admitting in part and denying in part the allegations of the complaint. On September 24, 1993, the General Counsel, based on further information regarding the Respondent's corporate structure, issued an amended complaint and notice of hearing alleging that Media One Incorporated and its alter ego/single employer Bauer-Kinnear Enterprises, Inc. violated Section 8(a)(5) and (1) of the Act. Although properly served copies of the amended complaint, neither Media One nor Bauer-Kinnear filed an answer to the amended complaint or moved for an extension of time for filing an answer.

On October 22, 1993, the General Counsel filed a motion to transfer case to Board and Motion for Summary Judgment, with exhibits attached. On October 26, 1993, the Board issued an order transferring proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

In the Motion for Summary Judgment, the General Counsel contends that the Respondents have failed to

¹ The caption has been changed to conform to the pleadings.

file an answer to the amended complaint and that, under Section 102.20 of the Board's Rules and Regulations,² the Board should find the allegations of that complaint to be true and issue an order based on those findings. The amended complaint includes all the allegations contained in the original complaint and additionally alleges that Bauer-Kinnear is the alter ego/single employer of Media One.

We find that summary judgment is not appropriate under the circumstances of this case. As noted above, the substantive allegations of the amended complaint are substantially the same as the allegations of the original complaint,³ and were previously denied in the answer to the initial complaint by Bauer-Kinnear. The Board will not grant summary judgment based on a respondent's failure to answer an amended complaint's allegations that are substantively unchanged from allegations contained in a prior version of the complaint to which the respondent filed a proper denial. *TPS/Total Property Services*, 306 NLRB 633 (1992); *Caribe Cleaning Services*, 304 NLRB 932 (1991). Accordingly, we find that Bauer-Kinnear's answer to the original complaint satisfies the Respondents' obligation under Section 102.20 to file a timely answer, and we accordingly deny the General Counsel's Motion for Summary Judgment.⁴

ORDER

IT IS ORDERED that the General Counsel's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 19 for further appropriate action.

² Sec. 102.20 provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown.

³ The sole difference between the original and amended complaints is that in the amended complaint the Respondents are alleged to be alter egos and a single employer rather than a single entity as alleged in the original complaint.

⁴ Because Media One's alleged violations are derivative and stem from its alleged alter ego/single employer status with Bauer-Kinnear, which answered the original complaint, summary judgment is inappropriate as to Media One. *TPS/Total Property Services*, supra at fn. 2.